

**REMARKS**

Reconsideration of this application is respectfully requested in view of the following remarks.

***The Claims are Patentable over U.S. Patent No. 6,580,800 to Yamasaki***

Claims 1-5, 7, 8, 10-18, 20-28 and 30-33 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,580,800 to Yamasaki et al. (“*Yamasaki*”). *Yamasaki* is directed to a headphone system having a pair of headphones, each of which is mounted to a user’s ear. More particularly, *Yamasaki* discloses each headphone being held in place by pinching a user’s ear between a housing (1) and a support (2). Column 2, lines 45-49.

In the Office Action, the Examiner takes the position that the support (2) is “a first membrane 2 coupled to the cover.” *Yamasaki*, however, fails to disclose or suggest a membrane, but rather discloses a support made of plastic. Column 7, lines 33-34. The support is necessarily rigid so that it can apply a pinching force to hold the headphone on a user’s ear.

Conversely, independent claims 1, 11, 22, 28 and 30 are directed towards ear warmers that include a membrane, which is defined within the specification as being a flexible member. *See e.g.*, Paragraph [1033]. Moreover, this use of the term membrane is consistent with dictionary definitions of the term. For example, at least one dictionary defines a membrane as being “any thin, flexible layer or material designed to separate, filter, etc.” Webster’s New World College Dictionary (4th ed. 2004).

Moreover, not only does *Yamasaki* fail to disclose a membrane, *Yamasaki* teaches away from such a flexible member, as such a modification to the *Yamasaki* device would impermissibly render it inoperative. Replacing the plastic support (2) in *Yamasaki* with a

flexible member would result in the device falling off the user's ear because it fail to apply a pinching force as required by *Yamasaki*.

Accordingly, the Applicants request that for at least these reasons, the rejection of claims 1, 11, 22, 28 and 30, and their respective dependent claims be withdrawn.

***Allowable Subject Matter***

The Applicants appreciate the indication of allowable subject matter in claims 6, 9, 19 and 29.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed or rendered moot. The Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding objections and rejections. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that further personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

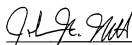
Prompt and favorable consideration of this Amendment is respectfully requested.

Dated: 21-JUL-06

Cooley Godward LLP  
ATTN: Patent Group  
The Bowen Building  
875 15<sup>th</sup> Street NW, Suite 800  
Washington, DC 20005-2221  
Tel: (703) 456-8000  
Fax: (202) 842-7899

Respectfully submitted,  
COOLEY GODWARD LLP

By:

  
John R. Mills  
Reg. No. 56,414